Subject Index

Table of Authorities Cited

Codes and Statutes

Miscellaneous

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

J. R. MASON,
Petitioner,
vs.
EL DORADO IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your Petitioner, J. R. Mason, respectfully petitions this Court for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, to review an opinion of that Court affirming a final

decree of the District Court, issued without notice, and denying a motion to reverse the decree upon the constitutional grounds raised in the assignment of errors.

The decision of the Circuit Court of Appeals holds in effect: That the District Court, as a Court of Bankruptcy, has jurisdiction (a) of the borrowing power of a sovereign State, after that power has been exercised by the State; (b) of the duty to levy and collect direct taxes on certain land; (c) to deprive Petitioner, a *cestui que trust,* of vested rights as the owner and holder of valid and binding tax-secured general obligation bonds maturing 1951 to 1965 in violation of the contract clause.

Your Petitioner contends that a Federal Court was not given the authority to issue the decree producing the results complained of, by any act of the Congress, including 11 U.S.C.A. 401-404, under which this proceeding was initiated.

OPINION BELOW.

Opinion of the Circuit Court of Appeals, not yet reported, is shown in R. 31. The District Court opinion appears at R. 5-12.

JURISDICTION.

Decision by the Circuit Court of Appeals was rendered on June 20, 1944. (R. 31.) The mandate was

stayed until disposition of the case by this Court. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. (28 U.S.C., Sec. 347(a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U.S.C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Section 3(b) (52 Stat. 940). Principal California statutes are "the California Irrigation District Act of 1897", Cal. Stats. 1897, p. 254, as amended; Stats. 1903, p. 3, as amended; Stats. 1929, p. 689; Stats. 1931, p. 1955.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a composition proceeding, initiated by the Respondent under the provisions of Chapter IX of the Bankruptcy Act of 1898, as amended. (11 U.S.C.A. Secs. 401-404.) The trial Court rendered a final decree without notice, "cancelling, annulling and holding for naught" the bonds owned by Petitioner, and its decision was affirmed by the Court below, with one unimportant modification. (R. 35.) This appeal is taken from the final decree.

By proper specification of error and statement of points, Petitioner J. R. Mason sought a reversal of the decree. (R. 16-26.)

Respondent, El Dorado Irrigation District, is an agent and instrumentality of the State of California, performing governmental functions, exclusively, with its powers and duties prescribed in California Statutes 1897, p. 254, and amendments thereto. Among the powers delegated by the State to Respondent is the State's power to borrow money to finance the cost of self-liquidating public improvements by the issuance of general obligation bonds secured by mandate to annually levy direct taxes on the value of land within the district, both urban and rural, without limitation as to rate or time or benefits received, until lawful obligations are fulfilled. Also to administer lands escheating for unpaid district taxes, as a beneficent landlord, and to collect the "rents, issues and profits" from such land for "all the uses and purposes of the act", which purposes include the payment of obligations.

In the exercise of the State's borrowing power delegated to Respondent, the electors voted $1,300,000 bonds in 1927, of which $600,000 maturing 1948 to 1967 were issued and sold, bearing 6% interest. The bonds are not redeemable or callable before maturity. It is not denied that the irrigation system and water rights acquired with the money borrowed from Petitioner was constructed, that the district is actually using them, that the district was authorized to construct them, and that the labor and materials for which payment has not been made were furnished in good faith and have not been paid for. It is not denied that the sovereign power of the State to borrow

money and to tax land are delegated to Respondent, and that those State powers were exercised when the bonds owned by Petitioner were issued as negotiable instruments, subject to the contract clause.

Although bitterly denounced and attacked, ever since Mr. Geo. H. Maxwell argued before this Court in the *Fallbrook Irrigation District v. Bradley* cause (164 U.S. 112), that this California statute is "Communism and confiscation under guise of law", it has been copied as the model law by most of the other western States, and has always operated to exert economic pressure on the large, absentee landholders to put land to its best use, or to let go of it at a figure that small holders were willing to pay. The amendment to this law, Stats. 1909, p. 461, permitting the abatement from taxation of buildings, planted orchards and other improvements has now become an integral part of the law, Stats. 1931, p. 233. All land within each district is assessed for purposes of taxation at its "full cash value", and is subject to *ad valorem* taxation, annually without limitation as to tax rate, to meet the district's costs of operation and obligations. Land monopolists and speculators, because of their quite unanimous disapproval of it, have never ceased in their efforts to have the law ruled unconstitutional, or to discover some way to circumvent it. They know the high rent that farm workers are willing to pay for the privilege of laboring on California irrigated land, and they also know that they can not shift to a tenant, any taxes they are compelled to pay to the districts that levy taxes under

this law. All economists now recognize that such taxes tend to keep down the price demanded for land titles, and that they can not increase living costs. This Court in the *Pollock v. Farmers L. & T. Co.,* 158 U.S. 601, case reached the conclusion that such taxes are "direct", and therefore may not be levied by Congress except subject to the regulation of apportionment. But if the final decree below stand, Congress will have released land from direct taxes lawfully payable by its holders to the State. Such will be the sole effect of annulling the bonds at bar, both from the legal and practical standpoints.

The pith of the conflict here is whether real property, and its "rent, issues and profits" are exclusively subject to the law of the sovereign State in which it is situated, as declared in 11 *Am. Jur.,* Conflict of Laws, Section 30, or whether such property rights may be "cancelled, annulled and held for naught" by a simple statute of the federal government, taking them from A and giving them to B.

It will not be denied that it is wholly *ultra vires* the Congress to authorize its Courts to issue any order that would result in increasing State taxes on land, unless clearly authorized by State law. (*Heine v. Board,* 19 Wall. 655.)

The final decree, as here applied does take from Petitioner and give to others, his vested rights in the "rents, issues and profits" in and to all the land, both urban and rural within the taxable boundaries of respondent, by condemning his bonds to death. The result of this decree, if it stand, can only be to in-

crease the net rent, after taxes remaining to be pocketed by the nontaxpaying land-title holders. The rental value of these lands will not and can not be increased nor decreased by any legislation or Court order. Only the net rent, after taxes can be capitalized by taxpayers into price for a land title. This is always "unearned increment".

The applicable State laws creating the powers and duties of Respondent and the property rights of Petitioner as a holder of the bonds at bar are in full force and effect. In the absence of violation of a federal statute, the Courts give full faith and credit to the taxing statutes of sovereign States, especially when, as in this case a failure to do so constitutes taking property in violation of the contract clause. The applicable State laws have neither been nullified nor superseded as valid existing laws, and Section 83(c) and (i) explicitly prohibit the Court issuing any order that "interferes" with their full force and effect.

Spellings v. Dewey, 122 Fed. (2d) 652 (C.C.A. 8).

QUESTIONS PRESENTED.

(1) Whether the sovereign power of a State to borrow money when exercised, is immune from the bankruptcy clause.

(2) Whether the final decree, as applied, "interferes" with the pledge made by the State to exercise its taxing power in favor of Petitioner, as a *cestui que trust,* according to the terms of the bonds and the law

authorizing respondent to borrow the funds taken from Petitioner by the final decree.

(3) Whether the issuance of the final decree without notice was proper.

(4) Whether the final decree deprives Petitioner of property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

REASONS RELIED ON FOR ISSUANCE OF THE WRIT.

(a) The decision of the Court of Appeals that a Federal Court, as a Court of Bankruptcy, has the power to issue decrees operating on the receipts from municipal bonds, or on the power of the States, and their instrumentalities to borrow money, is contrary to the applicable decisions of this Court.

(b) The Circuit Court of Appeals has sanctioned such a departure by the District Court from the most settled habits in the relationship between the States and Nation as to call for an exercise of this Court's power of supervision.

(c) The decision below is in direct conflict with that of another circuit, infra, page 16. (*In re Stilwell,* 120 F. (2d) 194.)

PRAYER.

Wherefore your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the

Ninth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record in the proceedings of that Court in *J. R. Mason v. El Dorado Irrigation District,* No. 10,541, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment of the United States Circuit Court of Appeals be reversed by this Court, and for such further relief as to the Court may seem proper.

Dated, San Francisco, California,
August 23, 1944.

J. R. MASON,
Petitioner in Propria Persona.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

J. R. MASON,
Petitioner,
vs.
EL DORADO IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

The opinion of the Court below has not been officially reported, but it appears in the record at pages 31-34. The District Court opinion appears at R. 5-12.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. (28 U.S.C. Sec. 347(a).)

A concise statement of the case appears in the preceding petition, which is hereby adopted and made a part of this brief.

ARGUMENT.

By its final decree in this case the District Court, without any notice, ordered the bonds owned by Petitioner "cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof".

The final decree gave relief beyond that authorized by any statute.

POINT I.

A FEDERAL COURT IS WITHOUT POWER TO INTERFERE WITH THE OPERATION OF THE STATE'S BORROWING POWER WHICH IS EXCLUSIVE, WHEN EXERCISED.

The Federal Courts, whether of law or of equity, are inherently without power to levy taxes or interfere with the application of State taxing mandates, as provided by State decisions.

Meriwether v. Garrett, 102 U.S. 515;
Rees v. Watertown, 19 Wall. 107;
Thompson v. Allen County, 115 U.S. 550;
Yost v. Dallas County, 236 U.S. 50;

Adirondack Ry. v. N. Y., 176 U.S. 335, 349;
Arkansas Corp. v. Thompson, 313 U.S. 132;
Fallbrook v. Cowan, 131 F. (2d) 513 (cert. denied);
Missouri v. Ross, 299 U.S. 72;
Ashton v. Cameron Co., 298 U.S. 513.

POINT II.

THE FINAL DECREE "INTERFERES" WITH THE SOLEMN PLEDGE OF THE STATE TO FAITHFULLY EXERCISE ITS TAXING POWER, DELEGATED TO RESPONDENT FOR THE BENEFIT OF PETITIONER WHO AS BONDHOLDER IS A CESTUI QUE TRUST, ENTITLED TO HAVE TAXES LEVIED AS REQUIRED BY LAW.

Section 83 of the Bankruptcy Act differs radically from other sections of the act, but it did not, even by implication repeal the provisions in Section 64(a). On the contrary the provision in Section 83(c) appears to expressly prohibit any order tending to "interfere" with the execution of State tax mandates, clearly a "political and governmental power".

On the same basic question of the inhibition under Section 64(a) to curb State tax mandates, this Court said in *Mo. v. Ross*, 299 U.S. 72:

> "* * * special provisions prevail over general ones which, in the absence of the special provisions, would control."

In construing the same law under which the bonds at bar were issued, this Court said in the bitterly contested *Fallbrook v. Bradley*, 164 U.S. 112, case:

"* * * the proper and fair amount and proportion of the tax that is to be levied on the land with regard to benefits it has received, which is open to the discretion of the State legislature, and *with which this Court ought to have nothing to do.*" (Italics ours.)

Adirondack Ry. v. N. Y., 176 U.S. 335;
Ashton v. Cameron Co., 298 U.S. 513;
Arkansas Corp. v. Thompson, 313 U.S. 132.

The bonds in the instant case are not subject to the tax-rate ceiling or other restrictions over the application of the State's tax power which justified the Circuit Courts in sustaining the decrees in

Equitable Reserve Assn. v. Dardanelle Special School District, Ark., 138 F. (2d) 236 (C.C.A. 8);
Kiles v. Trinchera Irr. Dist., 136 F. (2d) 894 (Colo.).

The Supreme Court of California in *Provident v. Zumwalt*, 12 Cal. (2d) 365, ruled clearly and unequivocally that there is no such limitation upon the taxing power and duties of Respondent.

POINT III.

THE FINAL DECREE AND THE DISCHARGE OF DEBTOR FROM ITS OBLIGATION TO PETITIONER, A CESTUI QUE TRUST, HAVING BEEN ISSUED WITHOUT ANY NOTICE, IS VOID.

The ruling of the Court below that this "proposition is without merit", appears to rest on an earlier

ruling of the same Court. But, the ruling cited involved an interlocutory decree which did not discharge nor release the debtor from its organic duties, nor did that decree "cancel, annul and hold for naught" the bonds at bar, as did the final decree in the instant case. Neither was there any drastic forfeiture device in that decree, as is inserted in the final decree here.

No provision repealing the required notice to creditors appears in Chapter IX. If the Court is authorized, when issuing orders under Chapter IX, to disregard the requirement of notice as provided in the Bankruptcy Act, Section 58 (11 U.S.C.A. Sec. 94), such authority has not been pointed out by the Court below.

It is not denied that the discharge was signed without notice, and without the knowledge of Petitioner, whose property was taken by the final decree. Obviously, no creditor in a proceeding under Chapter IX can raise the contract or any other clause as a defense against an interlocutory decree, because there is no actual taking of property in that decree. Then, after the creditor's property has been meted out a "death sentence", without notice, by a final decree, it is held to be too late to object!

This reasoning, if sustained by this Court, can only mean that no defense is possible at any time by any creditor whose property and constitutional rights are repudiated by a State agency filing under Chapter IX.

Discharge, without notice, has been held void in the following cases. No contrary decisions are known to Petitioner.

Windsor v. McVeigh, 93 U.S. 274 at 277;
Ellison v. Weintrob, 272 Fed. 466;
In re Langfeldt, 253 Fed. 458;
Sylvan Beach v. Koch, 140 Fed. (2d) 852;
Hansberry v. Lee, 311 U.S. 32.

The ruling by the Court below that this "proposition is without merit", conflicts squarely with the ruling by the U. S. Court of Appeals for the Second Circuit in *In re Stilwell,* 120 F. (2d) 194:

> "Where bankrupt gave no notice to creditors of application for discharge, discharge was properly set aside on application of creditors nine years after it was granted, regardless of whether creditors were harmed by failure to give notice. Bktcy. Act, § 58, 11 USCA § 94."

Wherefore Petitioner respectfully requests a ruling by this Court on this question.

POINT IV.

THE FINAL DECREE, AS APPLIED TAKES THE PROPERTY RIGHTS EMBODIED IN THE BONDS OWNED BY PETITIONER IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U. S. CONSTITUTION.

The final decree takes property lawfully belonging to Petitioner and gives it, not to the debtor but to the private holders of land titles, whose future tax levies will be curbed by exactly the amount taken by the decree from Petitioner. The decree will neither in-

crease nor decrease the rent value of the taxable land within the district, but will only operate to increase the net rent, after taxes for the title holders to capitalize as unearned increment, at the expense of Petitioner. It is not claimed that there is any law preventing Respondent from levying and collecting the taxes, as required by law, nor any denial that Respondent could and should obey the mandate it is under, to apply and enforce the power to tax the value of land delegated by the State to Respondent, to repay the money loaned by Petitioner.

The statute under which the money was borrowed by Respondent provides for no compensation to landholders who fail, refuse or neglect to pay the taxes required by law, and vests the whole title in Respondent "free of all encumbrances", and is, notwithstanding, entirely constitutional.

Fallbrook I. D. v. Bradley, 164 U.S. 112;
Herring v. Modesto I. D., 95 Fed. 705;
Fallbrook v. Cowan, 131 F. (2d) 513 (cert. denied);
S. San Joaquin v. Neumiller, 2 Cal. (2d) 485;
Anderson-Cottonwood v. Klukkert, 13 Cal. (2d) 191;
Provident v. Zumwalt, 12 Cal. (2d) 365.

Respondent, a State agency in the fulfillment of its delegated governmental function, can not give a valid consent to violate organic inhibitions nor acquire by contract with the R.F.C., authority to lay and collect land taxes sufficient only to satisfy such contract, and to repudiate its equally binding obligations to others.

Neither consent nor submission by a State or its governmental agencies can enlarge the powers of the Congress or its Courts. Petitioner has been cited no case decided by this Court holding that either the bankruptcy clause or the tax clause authorize the Congress or its Courts to trespass the well settled doctrine of immunity as adhered to steadfastly by this Court from *McCulloch v. Maryland,* 4 Wheat. 316; *Pollock v. Farmers L. & T. Co.,* 157 U.S. 429, 158 U.S. 601, to *Faitoute v. Asbury Park,* 316 U.S. 502, where this Court said:

> "It would offend the most settled habits of relationship between the states and the nation to imply such a retroactive nullification of state authority over its subordinate organs of government."

Notwithstanding the 16th Amendment, the bonds at bar are held to be immune from the tax clause. (72 *Op. A.G.* 38 (1937).)

If it is once ever conceded that Congress has the power, under the bankruptcy clause to relieve private holders of land titles from their lawful duty to pay direct *ad valorem* taxes as required by State law, whether with or without State consent, it must be conceded that powerful forces would spring to life, whose influence and ability to apply pressure in other parts of the world are sufficiently familiar to be reckoned as history. That this danger was clearly recognized, even by the leading centralist Hamilton, is made clear in *The Federalist,* No. XXXII, where he said that the authority of the States to lay land

taxes would remain *"independent and uncontrollable"* in *"the most absolute and unqualified sense"* after the adoption of the U. S. Constitution. Also that any federal law *"to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its Constitution"*.

Thomas Jefferson, speaking February 15, 1791 on National Banks, said:

> "I consider the foundation of the Constitution as laid on this ground: that 'All powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people.' To take a single step beyond the boundaries thus specifically drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

The final decree which deprives Petitioner of the property contained in his bonds, and which denies him the protection of the law pursuant to which they were issued, is repugnant to the Fifth and Fourteenth Amendments to the Federal Constitution.

Von Hoffman v. Quincy, 4 Wall. 535;
Home Bldg. & Loan v. Blaisdell, 290 U.S. 398;
Worthen v. Kavanaugh, 295 U.S. 56;
Louisville Ld. Bank v. Radford, 295 U.S. 555;
Wood v. Lovett, 313 U.S. 362;
N. Y. Chgo. & St. L. R. v. Frank, 314 U.S. 361;
Murray v. Charleston, 96 U.S. 432;
Spencer v. Merchant, 125 U.S. 345;
Virginia Coupon Cases, 114 U.S. 269;
Fletcher v. Peck, 6 Cranch 87.

CONCLUSION.

The questions involved in this case are basic and fundamental to the very existence of our constitutional system. The Federal Courts in California have interpreted the decision of this Court in the *U.S. v. Bekins,* 304 U.S. 27, case, as an abandonment of the immunity doctrine, opening wide the doors of Federal Bankruptcy Courts for issuing orders that are having the legal and practical effect of curbing local property tax rates without any regard to the property rights of bondholders as such, or the powers and duties of the State agency fixed by law at the time the money was borrowed. No attention whatever has been paid to the restrictive language inserted in the severability clause of the amended Section 81, nor to the prohibition against interference with political or governmental powers contained in Section 83(c).

Petitioner contends that if there is any species of local government bond still immune from federal interference, whether under the tax clause or the bankruptcy clause, it must be the bonds at bar. There is perhaps no other local government law in this Nation that has been more frequently attacked or more thoroughly construed and defended by both this Court and the California Courts, than the epochal law pursuant to which the bonds at bar were voted, issued and sold.

It can not be denied that the powers delegated to respondent by the State of California include the State's authority to borrow money and to issue binding and irrevocable bonds for its repayment. It was State action that authorized the exercise of the State's

borrowing power, prescribed the powers and duties of Respondent to tax and administer all the land within its boundaries, provided tax exemption for all district owned property and land, designated all revenues and property of the district as State owned, but dedicated for the uses and purposes of the Act, including the fulfillment of contractual obligations, according to the trust.

When the Legislature, in the exercise of a trust conferred upon it by the people has, by appropriate legislation executed that trust and has put into operation and effect a mandate that its agency levy and collect direct taxes on the value of specific land, without limitation on the rate of tax or on the number of years necessary to raise the money to fulfill obligations, and has also dedicated the "rents, issues and profits" of land escheated for unpaid taxes, without time limit to enable the agency to keep alive and meet its obligations, and also to hold all property immune and exempt from tax, neither the Legislature at a later session nor the Congress can revoke and nullify such State action, or any contract stemming from it, as does the final decree to the contract in the bonds at bar.

As was said by the Supreme Court of Nevada, speaking through Mr. Justice Orr in the case of *Magee v. Whiteacre,* 106 Pac. (2d) 751:

> "It is conceded that the Irrigation District law of Nevada, as well as most of the western States, is patterned after the Wright Act of California * * * In furtherance of this plan, the Legislature

> of the State of Nevada has spoken, and assured those who advanced the capital to make the improvements that the land thus improved shall repay the amounts advanced and expended, and have enacted that a lien shall subsist upon said lands to insure the payment thereof. Such is the announced public policy. It is fair, equitable and just and should not be struck down by the courts unless there is a clear and compelling reason for so doing."

It can not be denied that the California Legislature has equally assured Petitioner, as one who advanced the capital to make the improvements for Respondent "that the land thus improved shall repay the amounts advanced and expended, and have enacted that a lien shall subsist upon said lands to insure the payment thereof". (*Moody v. Provident,* 12 Cal. (2d) 389.)

This Court said in *Arkansas Corp. v. Thompson,* 312 U.S. 673:

> "Manifestly, whether or not taxes are 'legally due and owing' to a state depends on the valid laws of that state."

Also, this Court said in *League v. Texas,* 184 U.S. 156:

> "A delinquent taxpayer has no vested right in an existing mode of collecting taxes, there is no contract between him and the State that the latter will not vary the mode of collection."

See also,

Wood v. Lovett, 313 U.S. 362.

There is an unfulfilled contract made by the State in the bonds owned by Petitioner, which the final decree here challenged annuls. The sole beneficiaries of the decree, if it stand would be those holding land titles, who are without any "vested right" in the premises, and who, as taxpayers, have no contract with the State.

If a federal tax on interest received by Petitioner from the bonds at bar is repugnant to the Constitution, *a fortiori* reason indicates that a federal order denying Petitioner the interest and principal from the same bonds must be repugnant to the Constitution.

Otherwise, the tax clause is given an inferior rank and dignity to the bankruptcy clause, by this Court.

In *Providence Bank v. Billings,* 4 Pet. 514, this Court said:

> "Whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, but on its principle."

In the recent case of *Miller v. Mangus,* 317 U.S. 178, this Court said:

> "* * * any final order of judgment which the court could make in the premises would be inconsistent with equity, in contravention of the Constitutional rights of the parties; and contrary to the fundamental purposes of the Bankruptcy Act. The manifest difficulties are insurmountable."

For the above reasons Petitioner respectfully submits that the writ of certiorari should be granted, the

judgment and the opinion of the Court below reversed, and the proceedings directed to be dismissed.

Dated, San Francisco, California,
August 23, 1944.

Respectfully submitted,
J. R. MASON,
Petitioner in Propria Persona.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 411

J. R. MASON,
Petitioner

vs.

EL DORADO IRRIGATION DISTRICT,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION THERETO

CHELLIS M. CARPENTER
Russ Bldg., San Francisco, Calif.
Attorney for Respondent

THOMAS MAUL,
Placerville, Calif.
Of Counsel

Subject Index

Table of Authorities Cited

CASES

CODES AND STATUTES

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 411

J. R. MASON,
Petitioner

vs.

EL DORADO IRRIGATION DISTRICT,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION THERETO

The petitioner seeks a Writ of Certiorari directed to the United States Circuit Court of Appeals for the Ninth Circuit seeking to have this court again review questions decided time and again in proceedings brought under the provisions of Chapter 9 of the National Bankruptcy Act of 1898 as amended.

With the possible exception of the third point raised by petitioner, no new questions are presented to this court, and

all the matters and questions raised by petitioner are long since res adjudica.

The fact that this is merely an attempt to once more persuade this court to again review said Chapter 9 of the National Bankruptcy Act and to again inquire into the constitutionality of its provisions, is indicated by a very pertinent statement of petitioner appearing in the second paragraph of page 6 of his petition. Said statement being as follows:

> "The pith of conflict here is whether real property and its 'rents, issues and profits' are exclusively subject to the law of the Sovereign State in which it is situate."

Thus, it will be seen that petitioner, who in other former proceedings, being ably represented by counsel, questioned the constitutionality of said act and all of its provisions, is once more in this proceeding attempting to have this court reverse its former decisions and the decisions of many Circuit Courts of Appeal upholding the constitutionality of the act in question and proceeedings thereunder.

ANSWER TO FIRST, SECOND AND FOURTH PROPOSITIONS PRESENTED BY PETITIONER

The first, second and fourth questions raised by the petitioner in this proceeding are clearly res adjudica, having been before this court in a former petition for Writ of Certiorari, resulting from the entry of the interlocutory decree and all of said three points having been decided adversely to the position of the petitioner time without number.

> Thomas vs. El Dorado Irrigation District, 126 Fed. (2d) 922.

In the case just cited petitioner was a party to the proceeding and petition for writ of certiorari was denied in the October 1942 term of this court.

See U. S. vs. Bekins, 304 U. S. 27 in which the constitutionality of the act in question was raised and decided adversely to petitioner.

Mason vs. Anderson Cottonwood Irrigation District 126 Fed. (2d) 921.

Mason vs. Palo Verdi Irrigation District, 132 Fed. (2d) 714.

Nolander vs. Butte Valley Irrigation District, 132 Fed. (2d) 704.

Lorber vs. Vista Irrigation District, 127 Fed. (2d) 628.

Newhouse vs. Corcoran Irrigation District, 114 Fed. (2d) 690.

ANSWER TO THIRD POINT RAISED BY PETITIONER

Entry of Final Without Notice

Petitioner complains of the ruling of the Ninth Circuit Court of Appeals to the effect that the entry of the final decree without notice to petitioner is invalid and that petitioner's proposition is "without merit." Petitioner cites Section 58 of the Bankruptcy Act and several decisions thereunder, but Respondent desires to point out that Section 58 has reference to notice given to creditors in bankruptcy under proceedings not instituted pursuant to the provisions of Chapter IX.

Chapter IX is a proceeding in itself and fundamentally different than the proceedings with which Section 58 and Subdivisions a and b of Section 14 of the Bankruptcy Act are concerned. And the decisions cited by petitioner in support of his claim are decisions which relate to said Subdivisions a and b of Section 14 and Section 58 of the Bankruptcy Act. Said sections do specifically provide for notice, whereas Subdivision

f, Section 83 of the Bankruptcy Act makes no mention of notice whatsoever, but reads as follows:

> "(f) If any interlocutory decree confirming the plan is entered as herein provided, the plan and said decree confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. *And thereupon the court shall enter a final decree* (italics ours) determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it."

Attention is particularly called to the language which Respondent has set out in italics and contained in the section just cited, indicating that after compliance with the terms of the interlocutory, the Court shall "thereupon" enter the final.

Thus, it will be seen that no preliminary notice to the creditors, prior to the entry of the final, is required by the terms of the act, and that the action of the Court in entering the final is practically automatic. Petitioner complains that the decree cancels, annuls and holds for naught his bonds, but it is pointed out that provision is made for the petitoner to receive exactly the same amount, for such cancellation and annulment, that all other creditors have received, and it might be pertinent to ask if that decision did or accomplished any more than is

provided for in Subdivision f, Section 83, Chapter IX which provides that the District shall be "discharged from all debts and liabilities dealt with in the plan."

As pointed out in the decision of the Circuit Court of Appeals in this matter, page 32 and 33, Transcript of Record, the appellant (petitioner in this proceeding) does not claim any harm suffered by himself because of the asserted omission.

> See Bekins vs. Lindsay Strathmore Irrigation District (CCa 9) 114 Fed. (2d) 680.

In connection with this question it seems that a quotation from Mason vs. Palo Verdi Irrigation District, 132 Fed. (2d) 714 is pertinent, for there the Court said:

> "The court did not attempt to nor did it alter the interlocutory decree in any manner. It did as it says it did, construe, interpret, and apply the part of the interlocutory decree according to its 'true intent and meaning' in order to make plain that a strained, unjust and inconsistent construction argued for by appellant should not be followed. Essentially the same situation arose in Mason vs. Anderson Cottonwood, supra."

The same situation is true in the instant case. The final decree did nothing and attempted nothing that the interlocutory decree (which had theretofore been affirmed on appeal and certiorari in relation to the same denied by this court) did not do, and petitioner was not injured by the interlocutory decree.

> Thomas vs. El Dorado Irrigation District, (Supra).

In fact, Subdivision f of Section 83 of the Act in itself provided that upon the compliance with the interlocutory decree, the District was discharged and relieved of all liability with reference to the bonds in question.

CONCLUSION

Petitioner having raised no points that have not heretofore been decided by this court and Circuit Courts of Appeal, except the question of notice, and since notice is not provided for and no harm shown as a result of the lack of notice, it is respectfully submitted that the petiiton of J. R. Mason for Writ of Certiorari should be denied.

Respectfully submitted,

CHELLIS M. CARPENTER
Russ Bldg., San Francisco, Calif.
Attorney for Respondent

THOMAS MAUL,
Placerville, Calif.
Of Counsel

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 411

J. R. MASON,
Petitioner,
vs.
EL DORADO IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

J. RUPERT MASON,
1920 Lake Street, San Francisco, California,
Petitioner in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Table of Authorities Cited

Codes and Statutes

Miscellaneous

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 411

J. R. MASON, *Petitioner,*

vs.

EL DORADO IRRIGATION DISTRICT, *Respondent.*

PETITION FOR A REHEARING.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now petitioner J. R. Mason *in propria persona* and respectfully submits this petition for a rehearing in the above entitled cause.

There is presented in this petition a constitutional question of national importance to the sovereign rights of the States, and to the very survival of the doctrine

of immunity, as that doctrine has been adhered to steadfastly by this Court for more than 150 years. There exists serious conflict and confusion regarding the scope of 11 U.S.C.A. 401-404 among the Courts below, which needs resolving, and which conflicts can only be resolved by this Court.

Respondent cites no State decisions at all, in support of his contentions, and does not argue that the doctrine of immunity was overruled or even modified by this Court in *U. S. v. Bekins,* 304 U. S. 27.

Petitioner respectfully submits that the doctrine of immunity adhered to in *Ashton v. Cameron County,* 298 U. S. 513, was reaffirmed by this Court in *Graves v. New York,* 306 U. S. 466, 477, *Arkansas Corp. v. Thompson,* 312 U. S. 673, and again in *Faitoute v. Asbury Park,* 316 U. S. 502.

This Court was not called on to consider this basic constitutional question in the *Bekins* case, supra, because the facts presented in that case did not raise the question as an actual controversy.

Respondent makes no attempt to refute our statement that "The applicable State laws creating the powers and duties of Respondent and the property rights of Petitioner as a holder of the bonds at bar are in full force and effect" and that they "have neither been nullified nor superseded as valid existing laws". (p. 7.)

No State law or decision permitting respondent to escape performance of its trust duties to petitioner,

as clearly and unequivocally construed in *Moody v. Provident,* 12 Cal. (2d) 389, or decision modifying the ruling in *El Camino v. El Camino,* 12 Cal. (2d) 378, that respondent is the alter ego of the sovereign State itself, has been offered by respondent.

These State decisions hold that neither suit nor execution will lie against any revenues or other property of respondent, because it is property owned by the State. Hence the prosecution of this proceeding by respondent constitutes a suit by the State of California, the real party in interest, against petitioner, a *cestui que trust.*

It appears from the following argument submitted in the brief signed by Honorable Robert H. Jackson, as Attorney General of the United States, filed with this Court in the *Bekins* case (supra), that the supremacy of the State's tax power over the bankruptcy power, was clearly recognized:

> "The taxing agency, of course, *is subject to the full control of the State, and its powers are only those granted by the State.* Unless those powers, expressly or by implication, include authority to compose its debts and to invoke the jurisdiction of the bankruptcy court, the taxing agency can not seek the benefits of the Act of August 16, 1937. Not only, therefore, is the choice of the taxing agency wholly voluntary, but *it must necessarily be made subject to the provisions of the State law.*" (Italics ours.)

Respondent does not even suggest that there is anything in the State Constitution or law creating re-

spondent and prescribing its powers and duties which authorizes the annulment of the bonds at bar or the exercise of jurisdiction by a Federal Court to curb directly or indirectly the taxes payable to it.

Nothing contained in Sections 81 to 84 of the Bankruptcy Act supersedes or sets aside the provisions in Section 64(a), which exclude State tax claims from jurisdiction by this Court.

Respondent does not suggest that its fulfillment of the continuing trust obligation to levy and collect the direct taxes required by the law of its creator would violate any statute or constitutional provision.

In *U. S. v. Anderson-Cottonwood Irr. Dist.*, 19 Fed. Supp. 740, the Court said:

> "Rather than making the land within the district security for the bond issue in proportion to the benefits conferred, the California Legislature saw fit to delegate to the district its power to levy yearly assessments upon the land * * * This was a delegation of a part of its taxing power, and the validity of the exercise of that power by the district *must be measured by the same yardstick as though it were being exercised by the State.*" (Italics ours.)

In *von Hoffman v. Quincy*, 4 Wall. 535, this Court said:

> "The power (of taxation) given becomes a trust which the donor cannot annul and the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way, than in any other."

It is well settled that any conduct of a State Legislature that detracts in any way from the value of its own contracts is inhibited by the Constitution.

State of Louisiana v. New Orleans, 102 U. S. 203;

Edwards v. Kearzey, 96 U. S. 595, 607;

Ex parte Virginia, 100 U. S. 339, 347;

Iowa Des Moines Bank v. Bennett, 284 U. S. 239, 245;

Home Tel. Co. v. Los Angeles, 227 U. S. 278, 287;

Wood v. Lovett, 313 U. S. 362;

Wyandotte County v. Gen. S. Corp., 157 Kans. 64, 138 Pac. (2d) 479;

Bates v. Gregory, 89 Cal. 387.

It is also well settled that neither consent nor submission by a State can enlarge the powers of the Congress. Therefore the power of Congress to enact laws stemming from the bankruptcy clause is not a power that can be either created or enlarged by the consent of any State, because its power under this clause is "paramount and supreme and may be so exercised by Congress as to exclude every competing or conflicting proceeding in state or federal tribunals".

Kalb v. Feuerstein, 308 U. S. 433.

There is, therefore, a serious conflict presented by the adjudication of the Fifth Circuit in the case of *Rittenoure v. Charlotte County,* 109 F. (2d) 476, and again in *Green v. City of Stuart,* 135 F. (2d) 33 (petition for certiorari and for a rehearing denied by this

Court), where it was held, that Chapter IX "is a special exercise of the bankruptcy jurisdiction, *is dependent on state consent, and is limited to that consent*". (Italics ours.)

This Court later said in *Faitoute v. Asbury Park*, 316 U. S. 502, that jurisdiction exists under Chapter IX "* * * only in a case where the action * * * is authorized by state law".

In other Circuits the Courts have construed the amended Chapter IX otherwise, pointing out that it does not make State consent a prerequisite to jurisdiction, and holding that no State consent is necessary.

In re So. Beardstown Dr. Dist., 125 F. (2d) 13;
In re Summer Lake Irr. Dist., 33 Fed. Supp. 504.

The Legislatures of many States have also "consented" to repeal or compromise the obligation of taxpayers to the State and its local governments. A few such enactments denounced as utterly unconstitutional appear in the following cases:

Waterville v. Eastport, 8 Atl. (2d) 898 (Me.);
Day v. Ostergard, 21 Atl. (2d) 586 (Pa.);
Wilentz v. Hendrikson, 38 Atl. (2d) 199 (N.J.);
Biggs v. Beeler, 173 S. W. (2d) 144 (Tenn.).

The Constitution of the State of California in Article IV, Section 31, clearly and unequivocally prohibits the Legislature from consenting to anything that would result in the escape of the payment of taxes, as follows:

> "The Legislature shall have no power * * * to make any gift *or authorize the making of any gift,* of any public money or thing of value to any individual, municipal or other corporation whatever; * * *" (Italics ours.)

That there is a limit upon the power of a State to "consent" to the jurisdiction of a federal bankruptcy court, was made clear by this Court in its *U. S. v. Bekins* case, supra, when it said:

> A state may "give consents where that action would not contravene the provisions of the Federal Constitution."

Therefore, if the final decree depends on State consent, the Chapter 72 of California Statutes 1939 can supply no valid consent, because it attempts to authorize the Congress to make a gift of public money that the State has pledged and dedicated "for the uses and purposes" of the Irrigation District Act, among which is the fulfillment of the trust obligation to petitioner, as an owner and holder of unpaid bonds, annulled by the final decree.

That this will be the result, if the final decree stand, is pleaded in the petition, and not denied by respondent:

> "The sole beneficiaries of the decree, if it stand would be those holding land-titles, who are without any 'vested right' in the premises, and who, as taxpayers have no contract with the state." (p. 23.)
>
> *Tulare I. D. v. Shepard,* 184 U. S. 1.

With regard to the question asked by respondent as to whether the final decree "did or accomplished any more than is provided for in Sub. f, Sec. 83", the answer is that it did more than that, because of the 12-month time limitation inserted in the decree, which is not authorized, and which limitation is not contained in the final decree of Glenn-Colusa Irrigation District involved in the case of *Mason v. Glenn-Colusa I. D.*, Petition No. 412, October 1944 Term, in this Court. (R. 85.)

Petitioner respectfully submits that the provisions of Sub. f, Section 83, may not be invoked to nullify and disregard the provisions of Subs. c and i, Section 83. The State law governing the right of respondent to any discharge from its debts or liabilities are fully covered in the California Stats. 1903, p. 3; Stats. 1909, p. 139; Stats. 1911, Ex. Sess., p. 118; Stats. 1913, p. 39; Stats. 1915, p. 859.

Section 8 of Stats. 1909, p. 139, follows:

> "The court in its decree shall have power to make the orders necessary to carry out said proposition for the discharge of the indebtedness and the distribution of the property of said district, including the right to apportion any indebtedness found due, and to declare said portions liens upon the various parcels and lots of land within the district, and may decree a sale of the assets in such manner as may effectuate said proposition and as the said court may judge best * * * and may provide for conveyance of said irrigation system, including dams, reservoirs, canals, franchises and water rights, and also of

any other assets of the district, including lands sold thereto and the assessments due it."

Happy Valley v. Thornton, 1 Cal. (2d) 325.

Most of those holding bonds issued by respondent accepted $505 per $1000 bond cash in 1935 rather than face litigation. They might have given their bonds away. The law does not permit anything that other bondholders have done to affect the contract in the bonds owned by petitioner. The Courts have so decided.

Selby v. Oakdale I.D., 140 Cal. App. 171;
Meyerfeld v. S.S.J.I.D., 3 Cal. (2d) 409;
Co. of San Diego v. Hammond, 6 Cal. (2d) 709;
Provident v. Zumwalt, 12 Cal. (2d) 365;
State v. Brooklyn, 49 N.E. (2d) 684 (Ohio).

Respondent has not denied or even replied to the basic questions raised by petitioner, nor to the contentions set down in "Conclusion", pages 20 et seq., as follows:

"* * * if there is any species of local government bond still immune from federal interference, whether under the tax clause or the bankruptcy clause, it must be the bonds at bar. * * * It was State action that authorized the exercise of the State's borrowing power, prescribed the powers and duties of Respondent to tax and administer all the land within its boundaries, provided tax exemption for all district owned property and land, designated all revenues and property of the district as State owned, but dedicated for the uses and purposes of the Act, including the fulfillment of contractual obligations,

according to the trust. * * * There is an unfulfilled contract made by the State in the bonds owned by Petitioner, which the final decree here challenged annuls."

Petitioner does not seek to have this Court reverse its former decisions, but only to reaffirm or reverse the doctrine of immunity as it affects the bonds at bar, which bonds the final decree destroys.

The true character of California Irrigation District bonds, and their immunity from the bankruptcy clause has been thoroughly considered and decided by this Court, as pointed out in *Brush v. Comm.,* 300 U. S. 352, 366-369, and nothing said in the *Bekins* case, supra, purports to reverse that adjudication. The *Bekins* case did not reverse the principle of constitutional law announced in the *Ashton* case. It reaffirmed it.

In the *Ashton* case, supra, this Court said:

"The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national government are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."

In *Texas v. White,* 7 Wall. 700, 725, Chief Justice Chase said in strong and memorable language that

> "the Constitution in all of its provisions, looks to an indestructible Union, composed of indestructible states."

In *Lane County v. Oregon,* 7 Wall. 76, he said:

> "The people of the United States constitute one nation, under one government; and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state having its own government, and endowed with all the functions essential to separate and independent existence."

In *Coyle v. Smith,* 221 U. S. 559, this Court said:

> "To this we may add that the Constitutional equality of the states is essential to the harmonious operation of the scheme upon which the Republic was organized."

The States' power to borrow money and to levy direct taxes on the value of land to repay money borrowed, whether exercised directly or through an instrumentality of the State to whom its sovereign powers are delegated are not powers that are subordinate to, or "a part" of any powers delegated to the Congress, but are State sovereign powers of equal dignity, indestructible, equally important, and in their own demesne equally supreme.

> *Pollock v. Farmers L. & T. Co.,* 157 U. S. 429, 583, 158 U. S. 601, 630.

The powers of the separate States within their own spheres are as exclusive as are the sovereignty and

independence of the general government within its sphere.

Cooley, Const. Lim., 7th Ed., p. 64;
U. S. v. B. & O. R. Co., 17 Wall. 322, 327;
License Tax Cases, 5 Wall. 462, 471;
Adirondack Ry. v. N. Y., 176 U. S. 335.

The Congress, in approving the Constitution of West Virginia, a State born of the Civil War, affirmed the principles regarding State rights. That Constitution says:

> "The Government of the United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited to the States, are reserved to the States or to the people thereof. *Among the powers so reserved by the States is the exclusive regulation of their own internal government and police;* and it is the high and solemn duty of the several departments of government, created by this Constitution, to guard and protect the people of this State, from all encroachments on the rights so reserved." (Art. 1, Sec. 2.) (Italics ours.)

The proponents of 11 U.S.C.A. §§ 401-404 clearly understood and admitted that "this act would be constitutional as to some classes of units in some States and not be constitutional as to that same class in another State". (Hearings, House Comm. on the Judiciary, 75th Cong., 1st Sess., on HR 2505, 2506, 5403, 5969, March 17, 1937, Testimony of Congressman Wilcox on page 148.)

The Federal Income Tax Law is also constitutional, but it can not extend to the bonds issued by a State or

its political subdivisions to effectuate the borrowing power of the State.

A quite similar State vs. Federal question reached the boiling point in 1933 in Germany. It was resolved by the Reichstag on January 30, 1934, by the enactment of the German "Reconstruction Act" (Neuaufbaugesetz) which provided in the second article, "The sovereign rights of the States are transferred to the Reich", and in the third article, "The State governors come under the control of the Reich Minister of the Interior".

In the light of the tax burdens that this global war will make inescapable, and the strains and stresses they must create, the reasoning of this Court in *Cheathem v. Norvekl,* 92 U. S. 561, supplies another cogent support of petitioner's stand. It says:

> "If there existed in the courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the hands of a hostile judiciary."

The final decree, as applied, does in both legal and practical effect curb the direct ad valorem taxes respondent is obligated to levy and collect to pay the bonds owned by petitioner, hence it is, in effect, judicial "control of the collection of taxes", prohibited by this Court again in *Arkansas Corp. v. Thompson,* 312 U. S. 673.

> "The destruction of our State governments or the annihilation of their control over the local

concerns of the people would lead directly to revolution and anarchy and finally to despotism."
—President Andrew Jackson in 1833.

"If we dwarf the States into mere provinces we will thereby vest all our sovereignty in an absolute central power against which the spirit of liberty has so often, in so many countries struggled in vain."
—President Franklin Pierce in 1854.

Perhaps nobody has put the basic question here better than Henry George, when he said:

"Forms are nothing where substance has gone, and the forms of popular government are those from which the substance of freedom may most easily go * * * The single source of power once secured, everything else is secured. There is no unfranchised class to whom appeal may be made, no privileged orders who, in defending their own rights, may defend those of all. No bulwark remains to stay the flood, no eminence to rise above it. They were belted barons led by a mitred archbishop who curbed the Plantagenet with Magna Charta; it was the middle classes who broke the pride of the Stuarts; but a mere aristocracy of wealth will never struggle while it can hope to bribe a tyrant."

CONCLUSION.

It has been steadfastly recognized by this Court that a dual sovereignty can not be preserved if one of the parties to the relation is permitted to exercise

control over the borrowing or taxing power of the other, when exercised. Also, that if the existence of the power is once conceded, it would be impossible to draw the line or to distinguish the abuse of the power from its use.

While a Court is not to be stampeded by forebodings deemed by it to have no relation to the basic question raised in a case, the mounting competition between the Nation and the States for revenues, and the demands for Federal interference, through fiscal, tax or bankruptcy control of the States and their instrumentalities are sufficiently familiar to be reckoned more as history than prophecy.

If the final decree stand, as applied by the Court below, the doctrine of immunity will have suffered as serious a wrench as though the same bonds had lost their immunity from the tax clause, and the trend towards "an absolute central power against which the spirit of liberty has so often, in so many countries struggled in vain" will have won a decisive victory.

President Lincoln, in his First Inaugural Address quoted from a plank of the platform on which he was elected, as follows:

> "*Resolved,* That the maintenance inviolate of the rights of the States, and especially the right of each State to order and control its own domestic institutions according to its own judgment exclusively, is essential in that balance of power on which the perfection and endurance of our political fabric depend.* * *"

Abraham Lincoln again said, in a letter to his law partner Gridley:

> "The land, the earth that God gave to man for his home, sustenance and support, should never be the possession of any man, corporation, society, or unfriendly government, any more than air or water, if as much. An individual, or company, or enterprise requiring land should hold no more than is required for their home and sustenance, and never more than they have in actual use in the prudent management of their legitimate business, and this much should not be permitted when it creates an exclusive monopoly.
>
> All that is not so used should be held for the free use of every family to make homesteads, and to hold them as long as they are so occupied.
>
> A reform like this will be worked out sometime in the future. The idle talk of foolish men, that is so common now, on 'abolitionists, agitators, and disturbers of the peace', will find its way against it, with whatever force it may possess, and as strongly promoted and carried on as it can be by land monopolists, grasping landlords, and the titled and untitled senseless enemies of mankind everywhere."
>
> ("Abraham Lincoln. The Men of His Time." by Robt. H. Browne, M. D., Vol. II, page 89. Blakely-Oswald Printing Co., Chicago.)

It is respectfully submitted that this petition for a rehearing should be granted, and that a writ of certiorari be issued out of and under the seal of this

Honorable Court as prayed for in the petition for a writ of certiorari herein.

Dated, San Francisco, California,
November 8, 1944.

Respectfully submitted,
J. RUPERT MASON,
Petitioner in Propria Persona.

CERTIFICATE.

I, J. Rupert Mason, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
November 8, 1944.

J. RUPERT MASON,
Petitioner in Propria Persona.